

FILED
IN THE UNITED STATES DISTRICT COURT U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

FOR THE EASTERN DISTRICT OF TEXAS

JUL 28 2005

DAVID J. MALAND, CLERK
BY DEPUTY

ROBERT RAY SANDLIN

§

VS.

§ CIVIL ACTION NO. 4:05cv295

DAN JOSLIN

§

MEMORANDUM OPINION AND ORDER

Movant Robert Ray Sandlin, a federal prisoner confined in Seagoville, Texas, proceeding *pro se*, brings this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

Discussion

The Movant is incarcerated pursuant to a judgment entered in the United States District Court for the Eastern District of Texas. On August 5, 2004, the Movant was sentenced to 57 months of imprisonment. His direct appeal is pending before the United States Court of Appeals for the Fifth Circuit in No. 04-41064.

The Movant originally filed this action as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Movant is dissatisfied with appellate counsel. The Movant believes his attorney should challenge his conviction and sentence based on *Booker v. United States*, ___ U.S. __, 125 S. Ct. 738 (2005). He contends that counsel refused to raise such a claim and the Fifth Circuit will not allow him to file a *pro se* supplemental brief because he is represented by counsel. The United States District Court for the Northern District of Texas construed the petition as a Section 2255 motion and transferred it to this Court.

On July 21, 2005, the Movant requested to withdraw this case because he does not wish to pursue Section 2255 relief at this time. Pursuant to Federal Rule of Civil Procedure 41(a)(1), the

Movant is entitled to voluntarily dismiss the case prior to the service of any adverse parties. Therefore, his motion to withdraw the case should be granted.

ORDER

For the foregoing reasons, the Movant's motion to voluntarily dismiss this action is hereby **GRANTED**. A Final Judgment shall be entered dismissing this action pursuant to Fed.R. Civ. P. 41(a)(1).

SIGNED this 28 day of



, 2005.

PAUL BROWN
UNITED STATES DISTRICT JUDGE